



POLICE DEPARTMENT

April 29, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Mark Siley
Tax Registry No. 909321
Narcotics Borough Manhattan North
Disciplinary Case Nos. 2013-9753 & 2013-9780

The above-named member of the Department appeared before me on September 18, 2014, December 17, 2014, and January 6, 2015, charged with the following:

Disciplinary Case No. 2013-9753

1. Said Sergeant Mark Siley, while assigned to Narcotics Borough Manhattan North, on or about December 15, 2011 and through April 30, 2013, after having become aware of an allegation of corruption or other misconduct involving a member of the service, did fail and neglect to notify the Internal Affairs Bureau Command Center, as required.

P.G. 207-21, Page 1-2 - ALLEGATIONS OF CORRUPTION AND OTHER
MISCONDUCT AGAINST MOS COMPLAINTS

Disciplinary Case No. 2013-9780

1. Said Sergeant Mark Siley, while assigned to Narcotics Borough Manhattan North, on or about January 11, 2012, did wrongfully and without just cause fail to ensure that a domestic incident report was completed and a notification of suspected child abuse or neglect was made in a timely matter to wit: Sergeant Siley was aware that a detective under his supervision was required to complete a domestic incident report regarding suspected child abuse or neglect and to make a notification to the Administration for Children's Services and did not ensure that the report and notification were completed in a timely manner.

P.G. 215-03, Page 4, Paragraph 5, 7a (1)(2) and Note-

EMERGENCY REMOVALS OR INVESTIGATIONS AND REPORTING OF
ABUSED, NEGLECTED, OR MALTREATED CHILDREN - JUVENILE
MATTERS

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT
PROHIBITED CONDUCT

The Department was represented by Jessica Brenes, Esq., Department Advocate's
Office, and Respondent was represented by Rae Koshetz, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject
charges. A stenographic transcript of the trial record has been prepared and is available for
the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9753

Respondent is found Guilty.

Disciplinary Case No. 2013-9780

Respondent is found Guilty.

Disciplinary Case No. 2013-9780

Respondent is charged with, on January 11, 2012, failing to ensure that a Domestic
Incident (DIR) report was completed and a notification to the Administration for Children's
Services (ACS) of suspected child abuse or neglect was made in a timely manner.

Background

On January 11, 2012, Respondent was assigned as the module supervisor to a team of detectives who executed a search warrant. The team entered an apartment and apprehended three or four individuals. During the execution of this warrant, a child was present and Respondent saw him. At one point, Respondent was ordered to leave and execute a second warrant in another location. After Respondent left, Detective William Maisonette was directed by another supervisor to charge the arrestees with endangering the welfare of a child. The child was placed in the care of a neighbor and the arrested individuals were charged with endangering the welfare of a child.

After conducting his arrest and returning to the precinct, Maisonette filled out the paperwork. He entered Respondent's tax number and the computer generated Respondent's name in the supervisor's signature box. Maisonette was unaware that he had to prepare paperwork related to the endangerment charge. (Tr. 155).

An allegation of missing property by one of the individuals charged with endangering the welfare of a child led to an investigation. Lieutenant Edwin Gutierrez, the Internal Affairs Bureau (IAB) investigator, discovered that although Maisonette made an arrest for endangering the welfare of a child, he failed to prepare domestic incident and suspected child abuse reports and also failed to make a notification to the state central registry hotline for suspected child abuse and neglect. Only after the investigator discovered these mistakes were the reports and notification made, which was over a month after this warrant was executed. On May 29, 2013, Maisonette received a Schedule A Command Discipline and forfeited one vacation day.

FINDINGS

Respondent argued that Maisonette was not under his supervision because he was not the one who directed Maisonette to make the arrest. Respondent did not find out about the endangerment charge until he came back to "the base." He saw Maisonette after Maisonette had finished handing in "his onlines" and was leaving, but Maisonette did not tell him about the arrest.

Respondent explained that a supervisor's signatures are automatically entered on the online arrest paperwork by entering the supervisor's tax number. Respondent claimed, "I don't have to review their online arrest paperwork. Because once the online is inputted, it's already in the system." Respondent maintained that the online system does not require that the supervisor give permission.

Respondent was asked during his official Department interview on January 23, 2013, when he became aware of the arrest for endangering the welfare of a child. Respondent replied, "When I – when I got the online back to – uh, I keep a copy. I keep a copy online so I can put my sheet in my necro (phonetic) sheets." When asked on cross-examination if he recalled having stated that he found out about the charge when he got the onlines, Respondent stated,

Well, no. All I did was take the forms and put them in my file. In that file there was a copy of the original search warrant, a copy of the tack plan, and anyone who was arrested. So there would have been, I believe three for Maisonette and seven or eight for Detective Carusi. Did I go through each of them individually? No: there was no need.

Respondent agreed that he assumed Lieutenant Hoffman added the charge of endangering the welfare of a child. However, he did not know for a fact that Hoffman had directed that the charge be issued.

Respondent's statements about his review of the arrest report were filled with ambiguities and excuses. In his Department interview, Respondent indicated that he became aware of the charge for endangering the welfare of a child when he reviewed the copy of the reports online. Then, at trial, he indicated that he did not know about the charge because Maisonette did not tell him and because he did not review the online reports. But Respondent never explained how he became aware of the charge. How else could he have known about the charge if he did not review it in the online paperwork as he initially indicated in his interview?

Respondent's claim that he did not have to review the online reports is incorrect. Maisonette made a mistake in part because his supervisor, Respondent, failed to review the report. Whether Respondent did review it or not, it was his responsibility, as Maisonette's supervisor, to review this report.

Accordingly, Respondent is found Guilty of the charge in *Case No. 9780/13*.

Disciplinary Case No. 2013-9753

Respondent, is charged with, on or about December 15, 2011 and through April 30, 2013, failing and neglecting to notify IAB of an allegation of corruption or other misconduct involving a member of the service.

Respondent's counsel maintained that this charge was only added after Respondent refused to take a command discipline for *Case No. 9780/13*. The misconduct alleged in the second charge Respondent received preceded the date of the first charge received by Respondent. Respondent's counsel stated that the Statute of Limitations for the charges in both cases had run.

Sergeant Peter Duke, the IAB Investigator, testified that a person named Person A was arrested on June 7, 2012. Person A's mother, Person B, was a civilian member of the Department. Detective John Slater alleged that Person B might be involved with her son's narcotics sales out of her apartment. Duke's investigation led to *Case No. 9758/13*, the following charge.

FINDINGS

As evidence, the Department submitted three Complaint Follow-Ups (DD-5s). Carusi was instructed by Respondent to do computer checks on the apartment. Exhibit 3 A & B were DD-5s prepared by Detective Victor Carusi on December 15, 2011. In these reports Carusi stated that he spoke with an investigator who told him a man named "Person A was selling narcotics in the hallway out of a building at [REDACTED] Carusi then determined that the apartment where Person A was selling from was Apt. [REDACTED] which was occupied by Person B. A background check revealed that Person B was fingerprinted when she applied for a civilian position with the New York City Police Department. On December 15, 2011, Carusi submitted the DD-5 for Respondent to review.

DX 4 was a DD-5 prepared by Detective John Slater on January 19, 2012. Slater described discovering "Person A" in the middle of making a sale for marijuana. Before officers apprehended Person A, Person A "fled to the [REDACTED] floor screaming for his mother." The complaint stated, "[REDACTED], was present at the scene and lives in [REDACTED] where Person A stays." Based on previous complaints, Slater stated, "I do believe that Person A keeps narcotics in [REDACTED] and brings out the quantity that his clients request." Slater believed that on that day Person A

was meeting a buyer on the [REDACTED]. On previous occasions, Slater believed Person A would meet customers in the lobby.

Because Carusi failed to notify the Department about possible misconduct of a potential Department employee, Carusi received a Schedule B Command Discipline and forfeited two vacation days. For Slater's failure to notify the Department about possible misconduct, Slater received a Schedule B Command Discipline and forfeited two vacation days.

In all three DD-5s, Respondent's name was listed in the Supervisor's Signature box. On cross-examination, Respondent failed to provide a clearly articulated defense to the charge that he failed to notify IAB about Person B's possible criminal association.

At first, Respondent stated that he was on sick leave when the DX 4 report would have been reviewed, but then admitted on cross-examination that this report was prepared before he went on sick leave.

Respondent also indicated that he may not have properly reviewed the reports because they were computer generated and his name was automatically entered by the detectives. This is not a defense. When Respondent's signature is on any report, he is responsible for reviewing it.

Finally, Respondent indicated that he had knowledge that Person A was not residing with his mother and was selling out of another building. He also indicated that he knew this because he was aware that the buzzer in Person B's building did not work. Even if Respondent had good reason to believe that the incident described in the DD-5s was incorrect, he still was required to report what the DD-5s stated to IAB.

Accordingly, Respondent is found Guilty of the charge in *Case No. 9753/13*.

Motion to Dismiss Both Cases under Statute of Limitations

Respondent's counsel argued that both charges should be dismissed based on Respondent's having been served with them more than 18 months after the first triggering event. Respondent contended that the statutory time period should run from the date that Respondent was served with the charges. They should not be deemed to run from the date that the Department discovered the misconduct, Respondent claimed, because there was no intentional coverup. However, whether Respondent's misconduct was intentional rather than neglectful is not the issue. Here, Respondent has been found guilty of misconduct in two cases because of his failure to ensure that proper reports were made. His responsibility remained ongoing to ensure that the reports were made. He cannot now take advantage of his own continuous failure by asserting the Statute of Limitations; the continuous nature of his misconduct prevents the statutory period from running. *Steyers v. Burns*, 70 N.Y. 2d 990 (1998). Therefore, Respondent's application to dismiss both charges is denied.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 18, 1984. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

In *Case No. 2013-9780*, because Respondent failed to supervise two officers by failing to correct their mistakes, those officers each received a two day vacation penalty. In

Case No. 2013-9753, because Respondent failed to supervise another officer that officer received a one day penalty. As a supervisor, Respondent is held to a higher standard. Thus, the Department Advocate's recommendation of an eight vacation day penalty is appropriate. It is also consistent with *Case No. 82806/07* (July 22, 2009), in which a supervisor with no disciplinary record forfeited eight vacation days for signing a DIR without ensuring its proper completion and for failing to direct officers under his supervision to further investigate the offenses contained in the DIR.

Therefore, it is recommended that Respondent forfeit eight vacation days.

Respectfully submitted,



Amy J. Porter
Assistant Deputy Commissioner - Trials

APPROVED

JUL 27 2019

WILLIAM J. BRATTON
POLICE COMMISSIONER


**POLICE DEPARTMENT
CITY OF NEW YORK**

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT MARK SILEY
TAX REGISTRY NO. 909321
DISCIPLINARY CASE NOS. 2013-9753 & 2013-9780

Respondent has received an overall rating of 4.0 "Highly Competent" on his last three annual performance evaluations. He has been awarded four medals for Excellent Police Duty. [REDACTED]

Respondent has been the subject of one prior adjudication. In 1989, he forfeited 15 penalty days for failing to promptly notify the Department of a firearm discharge. He has been on Level II Discipline Monitoring since October 2013.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner – Trials